

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DAVID M. BARNETT,)	
)	
Petitioner,)	CAPITAL CASE
)	
v.)	No. 4:03CV00614 ERW
)	
DON ROPER,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s “Supplemental Application for Habeas Corpus Under 28 U.S.C. § 2254.” The Court has reviewed the application and finds it to be a second or successive petition under 28 U.S.C. § 2244. As a result, the Court cannot grant the relief requested in the application unless the Eighth Circuit Court of Appeals gives petitioner authorization to file the application in this Court. Id. The Court, therefore, will dismiss the application without prejudice.

Petitioner also moves the Court for relief under Rule 60(b) of the Federal Rules of Civil Procedure based on the United States Supreme Court’s ruling in Martinez v. Ryan, 132 S. Ct. 1309 (2012) (establishing that criminal defendants have right to effective assistance of counsel during initial collateral review proceedings). The request for review under Rule 60(b) is untimely. Furthermore, to the extent that petitioner seeks relief pursuant to a new theory, he must first obtain authorization from


the United States Court of Appeals for the Eighth Circuit before he may file a successive petition in this Court. Finally, the Court notes that petitioner may not obtain federal habeas relief based on the ruling in Martinez because it is not a new rule of constitutional law that is retroactively available on collateral review. See 132 S. Ct. at 1318-19 (Martinez was an “equitable ruling” that did not establish a new rule of constitutional law); 28 U.S.C. § 2244(b)(2)(A). As a result, the motion for relief from judgment will be denied.

Accordingly,

IT IS FURTHER ORDERED that petitioner’s “Supplemental Application for Habeas Corpus Under 28 U.S.C. § 2254” [Doc. 77] is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that petitioner’s motion for relief from judgment [Doc. 78] is **DENIED**.

So Ordered this 10th day of July, 2012.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE